

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH80175-LNf-149 (3/10)

Short Title: Facility Quality & Safety Improvement-HHS.-AB (Public)

Sponsors: Representative Wright.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE STATUTORY CHANGES TO IMPROVE QUALITY AND SAFETY IN HOME CARE SERVICES, MENTAL HEALTH FACILITIES, ADULT CARE HOMES, AND CERTAIN HOSPITAL FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 131E-140 reads as rewritten:

"§ 131E-140. Rules and enforcement.

(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part. Provided, these rules shall not extend, modify, or limit the licensing of individual health professionals by their respective licensing boards; nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider.

(a1) The Commission shall adopt rules that recognize the different types of home care services and shall adopt specific requirements for the provision of each type of home care ~~service~~.service including defining the geographic service area in which a home care agency is licensed to operate.

(a2) The Commission shall adopt rules to establish staff qualifications including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be either licensed or certified. The rules may establish minimum training and education qualifications for staff and may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the North Carolina General Statutes provided that the professional board evaluates applicants on a basis that protects the public health, safety, or welfare.

(a3) The Commission shall adopt rules for prohibiting licensed home care agencies.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home care agencies."

1 **SECTION 1.(b)** G.S. 131E-141 reads as rewritten:

2 "**§ 131E-141. Inspection.**

3 (a) The Department shall inspect home care agencies in accordance with rules
4 adopted by the Commission to determine compliance with the provisions of this Part
5 and the rules established by the Commission.

6 (b) Notwithstanding the provisions of G.S. 8-53, "Communications between
7 physician and patient," or any other provision of law relating to the confidentiality of
8 communications between physician and patient, the representatives of the Department
9 who make these inspections may review any writing or other record in any recording
10 medium which pertains to the admission, discharge, medication, treatment, medical
11 condition, or history of persons who are or have been clients of the agency being
12 inspected unless that client objects in writing to review of that client's records.
13 Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or
14 through an agency who may be interviewed by representatives of the Department may
15 disclose to these representatives information related to any inquiry, notwithstanding the
16 existence of the physician-patient privilege in G.S. 8-53, "Communication between
17 physician and patient," or any other rule of law; provided the client has not made
18 written objection to this disclosure. The agency, its employees, and any person
19 interviewed during these inspections shall be immune from liability for damages
20 resulting from the disclosure of any information to the Department. Any confidential or
21 privileged information received from review of records or interviews, except as noted in
22 G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed
23 without written authorization of the client or legal representative, or unless disclosure is
24 ordered by a court of competent jurisdiction. The Department shall institute appropriate
25 policies and procedures to ensure that this information shall not be disclosed without
26 authorization or court order. The Department shall not disclose the name of anyone who
27 has furnished information concerning an agency without the consent of that person.
28 Neither the names of persons furnishing information nor any confidential or privileged
29 information obtained from records or interviews shall be considered "public records"
30 within the meaning of G.S. 132-1, "Public records' defined." Prior to releasing any
31 information or allowing any inspections referred to in this section, the client must be
32 advised in writing by the licensed agency that the client has the right to object in writing
33 to release of information or review of the client's records and that by an objection in
34 writing the client may prohibit the inspection or release of the records.

35 (c) An agency must provide each client with a written notice of the Division of
36 Facility Services hotline number in advance of furnishing care to the client or during the
37 initial evaluation visit before the initiation of services."

38 **SECTION 2.(a)** G.S. 122C-23(e) reads as rewritten:

39 "~~(e) Unless a license is provisional or has been suspended or revoked, it shall be~~
40 ~~valid for a period not to exceed two years from the date of issue.~~Initial licenses issued
41 under the authority of this section shall be valid for not more than 15 months. Licenses
42 shall be renewed annually thereafter and shall expire at the end of the calendar year. The
43 expiration date of a license shall be specified on the license when issued. Renewal of a
44 regular license is contingent upon receipt of information required by the Secretary for

1 renewal and continued compliance with this Article and the rules of the Commission
2 and the Secretary. Licenses for facilities that have not served any clients during the
3 previous 12 months are not eligible for renewal.

4 The Secretary may issue a provisional license for a period up to six months to a
5 person obtaining the initial license for a facility. The licensee must demonstrate
6 substantial compliance prior to being issued a full license.

7 A provisional license for a period not to exceed six months may be granted by the
8 Secretary to a person who is temporarily unable to comply with a rule ~~or rules~~, when the
9 noncompliance does not present an immediate threat to the health and safety of the
10 individuals in the licensable facility. During this period the licensable facility shall
11 correct the noncompliance based on a plan submitted to and approved by the Secretary.
12 ~~The noncompliance may not present an immediate threat to the health and safety of the~~
13 ~~individuals in the licensable facility.~~ A provisional license for an additional period of
14 time to meet the noncompliance may not be issued."

15 **SECTION 2.(b)** G.S. 122C-24.1(a) reads as rewritten:

16 "**§ 122C-24.1. Penalties; remedies.**

17 (a) Violations Classified. – The Department of Health and Human Services shall
18 impose an administrative penalty in accordance with provisions of this Article on any
19 facility licensed under this Article which is found to be in violation of Article 2 or 3 of
20 this Chapter or applicable State and federal laws and regulations. Citations issued for
21 violations shall be classified according to the nature of the violation as follows:

22 (1) "Type A Violation" means a violation by a facility of the regulations,
23 standards, and requirements set forth in Article 2 or 3 of this Chapter
24 or applicable State or federal laws and regulations governing the
25 licensure or certification of a facility which results in death or serious
26 physical harm, or results in substantial risk that death or serious
27 physical harm will occur. Type A Violations shall be abated or
28 eliminated immediately. The Department shall require an immediate
29 plan of correction for each Type A Violation. The person making the
30 findings shall do the following:

- 31 a. Orally and immediately inform the administrator of the facility
32 of the specific findings and what must be done to correct them,
33 and set a date by which the violation must be corrected;
- 34 b. Within 10 working days of the investigation, confirm in writing
35 to the administrator the information provided orally under
36 sub-subdivision a. of this subdivision; and
- 37 c. Provide a copy of the written confirmation required under
38 sub-subdivision b. of this subdivision to the Department.

39 The Department shall impose a civil penalty in an amount not less than
40 ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor
41 more than ~~five thousand dollars (\$5,000)~~ ten thousand dollars
42 (\$10,000) for each Type A Violation in facilities or programs that
43 serve ~~nine-six~~ or fewer persons. The Department shall impose a civil
44 penalty in an amount not less than ~~five hundred dollars (\$500.00)~~

1 one thousand dollars (\$1,000) nor more than ten thousand dollars
2 (~~\$10,000~~) twenty thousand dollars (\$20,000) for each Type A
3 Violation in facilities or programs that serve ~~10~~7 or more persons.

- 4 (2) "Type B Violation" means a violation by a facility of the regulations,
5 standards, and requirements set forth in Article 2 or 3 of this Chapter
6 or applicable State or federal laws and regulations governing the
7 licensure or certification of a facility which present a direct
8 relationship to the health, safety, or welfare of any client or patient, but
9 which does not result in substantial risk that death or serious physical
10 harm will occur. The Department shall require a plan of correction for
11 each Type B Violation and may require the facility to establish a
12 specific plan of correction within a specific time period to address the
13 violation.

14 **SECTION 2.(c)** G.S. 122C-24.1(b) reads as rewritten:

- 15 (b) Penalties for Failure to Correct Violations Within Time Specified. –

16 (1) Where a facility has failed to correct a Type A Violation, the
17 Department shall assess the facility a civil penalty in the amount of up
18 to ~~five hundred dollars (\$500.00)~~one thousand dollars (\$1,000) for
19 each day that the deficiency continues beyond the time specified in the
20 plan of correction approved by the Department or its authorized
21 representative. The Department or its authorized representative shall
22 ensure that the violation has been corrected.

23 (2) Where a facility has failed to correct a Type B Violation within the
24 time specified for correction by the Department or its authorized
25 representative, the Department shall assess the facility a civil penalty
26 in the amount of up to ~~two hundred dollars (\$200.00)~~four hundred
27 dollars (\$400.00) for each day that the deficiency continues beyond the
28 date specified for correction without just reason for the failure. The
29 Department or its authorized representative shall ensure that the
30 violation has been corrected.

31 (3) The Department shall impose a civil penalty which is treble the
32 amount assessed under subdivision (1) of subsection (a) of this section
33 when a facility under the same management, ownership, or control has
34 received a citation and paid a penalty for violating the same specific
35 provision of a statute or regulation for which it received a citation
36 during the previous 12 months."

37 **SECTION 2.(d)** Effective July 1, 2007, G.S. 122C-25(a) reads as rewritten:

38 "**§ 122C-25. Inspections; confidentiality.**

39 (a) The Secretary shall make or cause to be made inspections that the Secretary
40 considers necessary. Facilities licensed under this Article shall be subject to inspection
41 at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e.
42 shall be inspected on an annual basis.

43 "

1 **SECTION 2.(e)** G.S. 122C-25 is amended by adding the following new
2 subsection to read:

3 **"§ 122C-25. Inspections; confidentiality.**

4 ...

5 (d) All residential facilities, as defined in G.S. 122C-3(14)e. shall ensure that the
6 Division of Facility Services complaint hotline number is posted conspicuously in a
7 public place in the facility."

8 **SECTION 3.(a)** G.S. 131D-2(b)(1) reads as rewritten:

9 (b) Licensure; inspections. –

10 (1) The Department of Health and Human Services shall inspect and
11 license, under rules adopted by the Medical Care Commission, all
12 adult care homes for persons who are aged or mentally or physically
13 disabled except those exempt in subsection (c) of this section. The
14 Department shall issue a license for a facility not currently licensed as
15 an adult care home for a period of six months. If the licensee
16 demonstrates substantial compliance with Articles 1 and 3 of this
17 Chapter and rules adopted pursuant thereto, the Department shall issue
18 a license for the balance of the calendar year. Licenses issued-renewed
19 under the authority of this section shall be valid for one year from the
20 date of issuance-renewal unless revoked earlier by the Secretary for
21 failure to comply with any part of this section or any rules adopted
22 hereunder. Licenses shall be renewed annually upon filing and the
23 Department's approval of the renewal application. The Department
24 shall charge each adult care home with six or fewer beds a
25 nonrefundable annual license fee in the amount of one hundred
26 twenty-five dollars (\$125.00). The Department shall charge each adult
27 care home with more than six beds a nonrefundable annual license fee
28 in the amount of one hundred seventy-five dollars (\$175.00) plus a
29 nonrefundable annual per-bed fee of six dollars and twenty-five cents
30 (\$6.25). A license shall not be renewed if outstanding fees, fines, and
31 penalties imposed by the State against the home have not been paid.
32 Fines and penalties for which an appeal is pending are exempt from
33 consideration. The renewal application shall contain all necessary and
34 reasonable information that the Department may by rule require.
35 Except as otherwise provided in this subdivision, the Department may
36 amend a license by reducing it from a full license to a provisional
37 license for a period of not more than 90 days whenever the Department
38 finds that:

- 39 a. The licensee has substantially failed to comply with the
40 provisions of Articles 1 and 3 of Chapter 131D of the General
41 Statutes and the rules adopted pursuant to these Articles;
42 b. There is a reasonable probability that the licensee can remedy
43 the licensure deficiencies within a reasonable length of time;
44 and

1 c. There is a reasonable probability that the licensee will be able
 2 thereafter to remain in compliance with the licensure rules for
 3 the foreseeable future.

4 The Department may extend a provisional license for not more than
 5 one additional 90-day period upon finding that the licensee has made
 6 substantial progress toward remedying the licensure deficiencies that
 7 caused the license to be reduced to provisional status.

8 The Department may revoke a license whenever:

9 a. The Department finds that:

10 1. The licensee has substantially failed to comply with the
 11 provisions of Articles 1 and 3 of Chapter 131D of the
 12 General Statutes and the rules adopted pursuant to these
 13 Articles; and

14 2. It is not reasonably probable that the licensee can remedy
 15 the licensure deficiencies within a reasonable length of
 16 time; or

17 b. The Department finds that:

18 1. The licensee has substantially failed to comply with the
 19 provisions of Articles 1 and 3 of Chapter 131D of the
 20 General Statutes and the rules adopted pursuant to these
 21 Articles; and

22 2. Although the licensee may be able to remedy the
 23 deficiencies within a reasonable time, it is not reasonably
 24 probable that the licensee will be able to remain in
 25 compliance with licensure rules for the foreseeable
 26 future; or

27 c. The Department finds that the licensee has failed to comply
 28 with the provisions of Articles 1 and 3 of Chapter 131D of the
 29 General Statutes and the rules adopted pursuant to these
 30 Articles, and the failure to comply endangered the health,
 31 safety, or welfare of the patients in the facility.

32 The Department may also issue a provisional license to a facility,
 33 pursuant to rules adopted by the Medical Care Commission, for
 34 substantial failure to comply with the provisions of this section or rules
 35 adopted pursuant to this section. Any facility wishing to contest the
 36 issuance of a provisional license shall be entitled to an administrative
 37 hearing as provided in the Administrative Procedure Act, Chapter
 38 150B of the General Statutes. A petition for a contested case shall be
 39 filed within 30 days after the Department mails written notice of the
 40 issuance of the provisional license.

41 **SECTION 3.(b)** G.S. 131D-2(b)(1a) reads as rewritten:

42 "(1a) In addition to the licensing and inspection requirements mandated by
 43 subdivision (1) of this ~~subsection~~, subsection:

1 a. ~~the~~The Department shall ensure that adult care homes required
2 to be licensed by this Article are monitored for licensure
3 compliance on a regular basis. All facilities licensed under this
4 Article and adult care units in nursing homes are subject to
5 inspections at all times by the Secretary. The Division of
6 Facility Services shall inspect all adult care homes and adult
7 care units in nursing homes on an annual basis, effective July 1,
8 2007, and thereafter.

9 b. ~~In carrying out this requirement, the~~The Department shall work
10 with county departments of social services to do the routine
11 monitoring in accordance with policy and procedures
12 established by the Division of Facility Services and to have the
13 Division of Facility Services oversee this monitoring and
14 perform any required follow-up inspection called for inspection.
15 The county department of social services shall document in a
16 written report all on-site visits including monitoring visits,
17 revisits, and complaint investigations. The county department of
18 social services shall submit to the Division of Facility Services
19 written reports of each facility visit within 15 working days of
20 the visit.

21 c. The Division of Facility Services shall conduct and document
22 annual and quarterly reviews of the county department of social
23 services' performance. When monitoring is not done timely or
24 there is failure to identify or document noncompliance, the
25 Department may intervene in the particular service in question.
26 Department intervention shall include one or more of the
27 following activities:

28 1. Sending staff of the Department to the county
29 department of social services to provide technical
30 assistance and to monitor the services being provided by
31 the facility.

32 2. Advising county personnel as to appropriate policies and
33 procedures.

34 3. Establishing a plan of action to correct county
35 performance.

36 If within one year of completion of the intervention activities,
37 the Secretary finds that the county department of social services
38 is not providing the necessary monitoring services or fails to
39 demonstrate reasonable efforts to do so, the Secretary may
40 provide written notification of the failure to correct to the chair
41 of the board of county commissioners and the chair of the
42 county board of social services. The Secretary may determine
43 that the Department shall assume the county's regulatory
44 responsibility for the county's adult care homes.

- 1 d. The county department of social services' adult home specialists
 2 and their supervisors shall complete:
 3 1. Eight hours of pre-basic training within 30 days of
 4 employment;
 5 2. 32 hours of basic training within three months of
 6 employment;
 7 3. 24 hours of post-basic training within 90 days of the
 8 basic training program;
 9 4. A minimum of eight hours of complaint investigation
 10 training within three months of employment; and
 11 5. A minimum of 16 hours of statewide training annually
 12 by the Division of Facility Services.

13 Adult home specialists and their supervisors employed prior to
 14 and on the effective date of this sub-subparagraph must
 15 complete the required training components within six months of
 16 the effective date. If the required training is not completed
 17 within six months of the established time frames, the Secretary
 18 may provide written notification of the county's failure to train
 19 staff to the chair of the county board of commissioners and the
 20 chair of the county board of social services.

- 21 e. The Department shall monitor regularly the enforcement of
 22 rules pertaining to air circulation, ventilation, and room
 23 temperature in resident living quarters. These rules shall include
 24 the requirement that air conditioning or at least one fan per
 25 resident bedroom and living and dining areas be provided when
 26 the temperature in the main center corridor exceeds 80 degrees
 27 Fahrenheit.
 28 f. The Department shall ~~also~~ keep an up-to-date directory of all
 29 persons who are administrators as defined in subdivision (1a) of
 30 subsection (a) of this section."

31 **SECTION 3.(c)** G.S. 131D-2 is amended by adding the following new
 32 subsection to read:

33 "(j) Adult care homes shall post the Division of Facility Services' complaint
 34 hotline number conspicuously in a public place in the facility."

35 **SECTION 3.(d)** G.S. 131D-34 reads as rewritten:

36 "**§ 131D-34. Penalties; remedies.**

37 (a) Violations Classified. – The Department of Health and Human Services shall
 38 impose an administrative penalty in accordance with provisions of this Article on any
 39 facility which is found to be in violation of requirements of G.S. 131D-21 or applicable
 40 State and federal laws and regulations. Citations issued for violations shall be classified
 41 according to the nature of the violation as follows:

- 42 (1) "Type A Violation" means a violation by a facility of the regulations,
 43 standards, and requirements set forth in G.S. 131D-21 or applicable
 44 State or federal laws and regulations governing the licensure or

1 certification of a facility which results in death or serious physical
 2 harm, or results in substantial risk that death or serious physical harm
 3 will occur. Type A Violations shall be abated or eliminated
 4 immediately. The Department shall require an immediate plan of
 5 correction for each Type A Violation. The person making the findings
 6 shall do the following:

- 7 a. Orally and immediately inform the administrator of the facility
- 8 of the specific findings and what must be done to correct them,
- 9 and set a date by which the violation must be corrected;
- 10 b. Within 10 working days of the investigation, confirm in writing
- 11 to the administrator the information provided orally under
- 12 sub-subdivision a. of this subdivision; and
- 13 c. Provide a copy of the written confirmation required under
- 14 sub-subdivision b. of this subdivision to the Department.

15 The Department shall impose a civil penalty in an amount not less than
 16 ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) nor
 17 more than ~~five thousand dollars (\$5000)~~ ten thousand dollars
 18 (\$10,000) for each Type A Violation in homes licensed for ~~nine-six~~ or
 19 fewer beds. The Department shall impose a civil penalty in an amount
 20 not less than ~~five hundred dollars (\$500.00)~~ one thousand dollars
 21 (\$1,000) nor more than ~~ten thousand dollars (\$10,000)~~ twenty thousand
 22 dollars (\$20,000) for each Type A Violation in facilities licensed for
 23 ~~10-7~~ or more beds.

24 (2) "Type B Violation" means a violation by a facility of the regulations,
 25 standards and requirements set forth in G.S. 131D-21 or applicable
 26 State or federal laws and regulations governing the licensure or
 27 certification of a facility which present a direct relationship to the
 28 health, safety, or welfare of any resident, but which does not result in
 29 substantial risk that death or serious physical harm will occur. The
 30 Department shall require a plan of correction for each Type B
 31 Violation and may require the facility to establish a specific plan of
 32 correction within a specific time period to address the violation.

33 (b) Penalties for failure to correct violations within time specified.

34 (1) Where a facility has failed to correct a Type A Violation, the
 35 Department shall assess the facility a civil penalty in the amount of up
 36 to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for
 37 each day that the deficiency continues beyond the time specified in the
 38 plan of correction approved by the Department or its authorized
 39 representative. The Department or its authorized representative shall
 40 ensure that the violation has been corrected.

41 (2) Where a facility has failed to correct a Type B Violation within the
 42 time specified for correction by the Department or its authorized
 43 representative, the Department shall assess the facility a civil penalty
 44 in the amount of up to ~~two hundred dollars (\$200.00)~~ four hundred

1 dollars (\$400.00) for each day that the deficiency continues beyond the
2 date specified for correction without just reason for such failure. The
3 Department or its authorized representative shall ensure that the
4 violation has been corrected.

- 5 (3) The Department shall impose a civil penalty which is treble the
6 amount assessed under subdivision (1) of subsection (a) when a
7 facility under the same management, ownership, or control has
8 received a citation and paid a penalty for violating the same specific
9 provision of a statute or regulation for which it received a citation
10 during the previous 12 months. The counting of the 12-month period
11 shall be tolled during any time when the facility is being operated by a
12 court-appointed temporary manager pursuant to Article 4 of this
13 Chapter.

14 (c) Factors to be considered in determining amount of initial penalty. In
15 determining the amount of the initial penalty to be imposed under this section, the
16 Department shall consider the following factors:

- 17 (1) The gravity of the violation, including the fact that death or serious
18 physical harm to a resident has resulted; the severity of the actual or
19 potential harm, and the extent to which the provisions of the applicable
20 statutes or regulations were violated;
- 21 (1a) The gravity of the violation, including the probability that death or
22 serious physical harm to a resident will result; the severity of the
23 potential harm, and the extent to which the provisions of the applicable
24 statutes or regulations were violated;
- 25 (1b) The gravity of the violation, including the probability that death or
26 serious physical harm to a resident may result; the severity of the
27 potential harm, and the extent to which the provisions of the applicable
28 statutes or regulations were violated;
- 29 (2) The reasonable diligence exercised by the licensee to comply with
30 G.S. 131E-256 and G.S. 131E-265 and other applicable State and
31 federal laws and regulations;
- 32 (2a) Efforts by the licensee to correct violations;
- 33 (3) The number and type of previous violations committed by the licensee
34 within the past 36 months;
- 35 (4) The amount of assessment necessary to insure immediate and
36 continued compliance; and
- 37 (5) The number of patients put at risk by the violation.

38 (c1) The facts found to support the factors in subsection (c) of this section shall be
39 the basis in determining the amount of the penalty. The Secretary shall document the
40 findings in written record and shall make the written record available to all affected
41 parties including:

- 42 (1) ~~The penalty review committee;~~
- 43 (2) The local department of social services who is responsible for
44 oversight of the facility involved;

- 1 (3) The licensee involved;
- 2 (4) The residents affected; and
- 3 (5) The family members or guardians of the residents affected.

4 (c2) Local county departments of social services and Division of Facilities
5 Services personnel shall submit proposed penalty recommendations to the Department
6 within 45 days of the citation of a violation.

7 (d) The Department shall impose a civil penalty on any facility which refuses to
8 allow an authorized representative of the Department to inspect the premises and
9 records of the facility.

10 (d1) The Department shall impose a civil penalty on any applicant for licensure
11 who provides false information or omits material information on an application. The
12 amount of the penalty shall be as is prescribed for a Type A violation.

13 (e) Any facility wishing to contest a penalty shall be entitled to an administrative
14 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General
15 Statutes. A petition for a contested case shall be filed within 30 days after the
16 Department mails a notice of penalty to a licensee. At least the following specific issues
17 shall be addressed at the administrative hearing:

- 18 (1) The reasonableness of the amount of any civil penalty assessed, and
- 19 (2) The degree to which each factor has been evaluated pursuant to
20 subsection (c) of this section to be considered in determining the
21 amount of an initial penalty.

22 If a civil penalty is found to be unreasonable or if the evaluation of each factor is
23 found to be incomplete, the hearing officer may recommend that the penalty be adjusted
24 accordingly.

25 (f) Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty
26 imposed by the Department of Health and Human Services under this section shall
27 commence on the day the violation began.

28 (g) The Secretary may bring a civil action in the superior court of the county
29 wherein the violation occurred to recover the amount of the administrative penalty
30 whenever a facility:

- 31 (1) Which has not requested an administrative hearing fails to pay the
32 penalty within 60 days after being notified of the penalty, or
- 33 (2) Which has requested an administrative hearing fails to pay the penalty
34 within 60 days after receipt of a written copy of the decision as
35 provided in G.S. 150B-36.

36 (g1) In lieu of assessing an administrative penalty, the Secretary may order a
37 facility to provide staff training if:

- 38 (1) The cost of training does not exceed one thousand dollars (\$1,000);
- 39 (2) The penalty would be for the facility's only violation within a
40 12-month period preceding the current violation and while the facility
41 is under the same management; and
- 42 (3) The training is:
 - 43 a. Specific to the violation;

- 1 b. Approved by the Department of Health and Human Services;
2 and
3 c. Taught by someone approved by the Department and other than
4 the provider.
- 5 (h) ~~The Secretary shall establish a penalty review committee within the~~
6 ~~Department, which shall review administrative penalties assessed pursuant to this~~
7 ~~section and pursuant to G.S. 131E-129 as follows:~~
- 8 (1) ~~The Secretary shall:~~
- 9 a. ~~Administer the work of the committee;~~
10 b. ~~Ensure provision of departmental staff review;~~
11 c. ~~Evaluate the local departments of social services and the~~
12 ~~Division of Facility Services' penalty recommendations;~~
13 d. ~~Ensure that recommendations by the Department are complete~~
14 ~~and submitted within 60 days of receipt of the initial~~
15 ~~recommendations from the local departments of social services~~
16 ~~or the Division of Facility Services; and~~
17 e. ~~Provide written copies of all procedures to:~~
- 18 1. ~~The penalty review committee;~~
19 2. ~~The local department of social services who is~~
20 ~~responsible for oversight of the facility involved;~~
21 3. ~~The licensee involved;~~
22 4. ~~The residents affected; and~~
23 5. ~~The families or guardians of the residents affected.~~
- 24 (2) ~~The Secretary shall ensure that the Nursing Home/Adult Care Home~~
25 ~~Penalty Review Committee established by this subsection is comprised~~
26 ~~of nine members. At least one member shall be appointed from each of~~
27 ~~the following categories:~~
- 28 a. ~~A licensed pharmacist;~~
29 b. ~~A registered nurse experienced in long term care;~~
30 c. ~~A representative of a nursing home;~~
31 d. ~~A representative of an adult care home; and~~
32 e. ~~Two public members. One shall be a "near" relative of a nursing~~
33 ~~home patient, chosen from a list prepared by the Office of State~~
34 ~~Long Term Care Ombudsman, Division of Aging, Department~~
35 ~~of Health and Human Services. One shall be a "near" relative of~~
36 ~~a rest home patient, chosen from a list prepared by the Office of~~
37 ~~State Long Term Care Ombudsman, Division of Aging,~~
38 ~~Department of Health and Human Services. For purposes of this~~
39 ~~subdivision, a "near" relative is a spouse, sibling, parent, child,~~
40 ~~grandparent, or grandchild.~~
- 41 (3) ~~Neither the pharmacist, nurse, nor public members appointed under~~
42 ~~this subsection nor any member of their immediate families shall be~~
43 ~~employed by or own any interest in a nursing home or adult care~~
44 ~~home.~~

- 1 (4) ~~Prior to serving on the committee, each member shall complete a~~
2 ~~training program provided by the Department of Health and Human~~
3 ~~Services that covers standards of care and applicable State and federal~~
4 ~~laws and regulations governing facilities licensed under Chapter 131D~~
5 ~~and Chapter 131E of the General Statutes.~~
6 (5) ~~Each member of the Committee shall serve a term of two years. The~~
7 ~~initial terms of the members shall commence on August 3, 1989. The~~
8 ~~Secretary shall fill all vacancies. Unexcused absences from three~~
9 ~~consecutive meetings constitute resignation from the Committee.~~
10 (i) The clear proceeds of civil penalties provided for in this section shall be
11 remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."
12 **SECTION 4.** This act is effective when it becomes law.